

## **CITY OF MAPLE VALLEY, WASHINGTON**

### **ORDINANCE NO. O-17-629**

#### **AN ORDINANCE OF THE CITY OF MAPLE VALLEY, WASHINGTON, GRANTING A FRANCHISE TO FIORITO ENTERPRISES, INC. & RABANCO COMPANIES PROVIDING FOR ACCEPTANCE OF FRANCHISE, AND SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE**

WHEREAS, RCW 35A.14.900 provides that annexation by any code city shall cancel, as of the effective date of such annexation, any franchise granted to any entity by the state of Washington authorizing or otherwise permitting the operation of any solid waste collection business within the limits of the annexed territory; and

WHEREAS, RCW 35A.14.900 provides that the holder of such canceled franchise shall be granted by the annexing code city a franchise to continue such business within the annexed territory for a term of not less than seven years from the date of issuance thereof; and

WHEREAS, in the event that any entity whose franchise has been canceled, suffers any measurable damages as a result of annexation pursuant to RCW 35A.14.900, such entity has the right of action against any city causing such damages; and

WHEREAS, the City of Maple Valley adopted Ordinance O-17-628 published on November 17, 2017 to annex one lot of residentially zoned property commonly known as the Deyerin lot effective November 22, 2017; and

WHEREAS, it is essential that residential, commercial and industrial solid waste be properly collected and recycled or disposed of in order to avoid adverse environmental and social effects; and

WHEREAS, Fiorito Enterprises, Inc. & Rabanco Companies (“Franchisee”) has operated a municipal solid waste collection business within unincorporated King County pursuant to Tariff 27 and/or its predecessor or successors series and Certificate G-000060; and

WHEREAS, Maple Valley City Code 12.15.005 defines a “franchise” as the initial authorization or renewal thereof, approved by an ordinance of the City which authorizes the franchisee to provide services to persons or areas in the City; and

WHEREAS, the Council finds that the grant of the franchise contained in this ordinance is in the best interests of the public;

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF MAPLE VALLEY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Notice to Hauler. The publication of Ordinance O-17-628 on November 17, 2017 shall constitute the City's notification to the Franchisee, of the effective date of annexation of the area known as Deyerin lot, pursuant to RCW 35A.14.900.

Section 2. Franchise Granted. In satisfaction of the City's obligations under applicable law, including without limitation, RCW 35A.14.900, the City hereby grants to the Franchisee, its successors and assigns, a continued franchise for a period of seven years. The franchise term will end on November 22, 2024. The franchise authorizes the Franchisee to collect solid waste within the applicable annexation area known as the Deyerin lot, in the City of Maple Valley. The Franchisee unconditionally accepts this franchise to collect solid waste inside the City of Maple Valley, within the annexation area known as the Deyerin lot, as more fully described in Ordinances O-17-628, incorporated herein as if fully set forth. The Public Works Director shall administer this franchise and monitor the Franchisee compliance with the terms and provisions herein. Nothing in this franchise exceeds the scope of the Franchisee's solid waste certificate in the annexed area at the time of annexation. At the time the franchise terminates, the Franchisee shall provide all route, customer and other information as required by the Public Works Director, under such arrangements as may be convenient to both parties, but in no event shall the Franchisee fail to provide such information thirty (30) days prior to the franchise termination date. The City reserves full authority to regulate and tax the Franchisee as authorized by law subject to any other regulatory approvals if necessary. The Franchisee agrees to indemnify and hold harmless the City, its officers, elected and appointed officials, agents and employees from all loss or liability for the Franchisee's actions in connection with the enjoyment of this franchise. This provision survives expiration or revocation of this franchise. The Franchisee's obligation to indemnify and hold harmless the City shall not in any way be modified by the grant of immunity to employers under Title 51 RCW, such immunity being waived for purposes of that obligation. This provision has been mutually negotiated between the parties. All Franchisee records relating to operation of this franchise are subject to inspection and copying by the Public Works Director or his/her designee. The Franchisee shall provide a copy of its annual report for Certificate G-000060 to the WUTC, to the Public Works Director, relating to its operations hereunder. The Franchisee agrees to provide evidence of insurance coverage to include General Commercial Liability with limits no less than \$3,000,000 each occurrence; \$5,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit. The Franchisee agrees to provide Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$3,000,000 per accident. The Franchisee shall provide Contractor's Pollution Liability insurance with limits no less than \$3,000,000 combined single limit per occurrence for bodily injury, personal injury, property damage, cleanup costs and legal defense expense.

Section 3. Service and Charges. The Franchisee shall continue to offer and provide equivalent collection services at the same base customer rates throughout the franchise area as provided under its WUTC G-certificate tariff for the Franchisee, as approved and revised periodically through the WUTC rate-setting process and as authorized by any City franchise fee or other embedded tax. Operating standards shall be equivalent to and consistent with those required under WUTC Certificate G-000060 regulations for the Franchisee.

Section 4. End of Franchise. The City may plan or initiate transition activities for any collection arrangement to succeed the franchise services, provided that the franchise period will be in effect for the entire seven years as set forth in Section 2.

Section 5. Compliance with Law. The Franchisee shall comply with all City, County, State and Federal laws and regulations applicable to the services provided under this Franchise. Such compliance shall include, but not be limited to, customer rate change notification, collecting and paying utility and other taxes, and otherwise complying with City Code.

Section 6. Acceptance of Franchise. The City tenders this franchise and the Franchisee accepts the same in full satisfaction of any and all claims for measurable damages caused by cancellation of any state certificate whether arising under RCW 35A.14.900 or any other authority. The Franchisee acknowledges that City has granted a franchise term, pursuant to RCW 35A.14.900 and the term granted is accepted in full settlement and compromise of any additional claims for damages or additional compensation because of the City's exercise of its collection authority over the annexed territory upon the expiration of this franchise or for any other reason. The signature of the Franchisee's authorized representative on this Ordinance shall be deemed acceptance of all franchise terms.

Section 7. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

Section 8. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 9. Effective Date. This Ordinance is effective November 22, 2017.

**ADOPTED BY THE CITY COUNCIL AT A REGULAR BUSINESS MEETING  
THEREOF ON THE 13<sup>th</sup> DAY OF NOVEMBER 2017.**

CITY OF MAPLE VALLEY

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Sean P. Kelly, Mayor

ATTEST/AUTHENTICATED:

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Shaunna Lee-Rice, City Clerk

Approved as to form:

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Patricia Taraday, City Attorney

Date of Publication: November 17, 2017

Effective Date: November 22, 2017

Terms of Franchise Accepted:

By: \_\_\_\_\_  
Fiorito Enterprises, Inc. & Rabanco Companies

Its: \_\_\_\_\_

Date: \_\_\_\_\_